



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

July 31, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eric Senat, M.D.
Kingsway Orthopedic Corporation
3156 Kings Highway
Brooklyn, New York 11234

Eric Senat, M.D.
[REDACTED]

Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Eric Senat, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-191) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A solid black rectangular box used to redact the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Eric Senat, M.D. (Respondent)

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 15-191

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Paul Tsui, Esq.
For the Respondent: Pro Se

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by engaging in conduct that resulted in the Respondent's Federal felony conviction. The Committee voted to revoke the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2015), the Respondent asks the ARB to reverse the Committee's Determination, due to the Committee's failure to grant an adjournment to allow the Respondent to appear for the hearing and due to errors in the Determination. After considering the Committee's Determination, the hearing record and the parties' review submissions, the ARB remands this case to the Committee, pursuant to PHL § 230-c(4)(b), for the Committee to conduct additional proceedings.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq.*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The BPMC Committee in this case

conducted a hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL §230(10)(p). The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(a)(ii) (McKinney 2015) by engaging in conduct that resulted in a conviction under Federal Law. The action against the Respondent began with a December 17, 2014 order from the Commissioner of Health suspending the Respondent's License summarily (Summary Order) pursuant to PHL § 230(12)(b). In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee indicated that the Respondent entered a guilty plea in United States District Court for the Southern District of New York, to Health Care Fraud, a Federal felony, in violation of Title 18 USC §§ 1347 and 2. The District Court sentenced the Respondent to fifteen months imprisonment, two years supervised probation and \$324,726.00 in restitution. The Court also required the Respondent to pay a \$10,000.00 fine and a \$100.00 assessment.

The Committee determined that the Respondent committed professional misconduct under EL § 6530(9)(a)(ii) by engaging in conduct that resulted in the Federal felony conviction. The Committee found that the Respondent billed Medicaid fraudulently for many years. The Committee noted that the Respondent submitted 35 letters of support and that the Respondent provided free medical services. The Committee found that letters and pleas failed to excuse the Respondent for "outright thievery". The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on March 31, 2015. This proceeding commenced on April 14, 2015, when the Respondent submitted a Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the

Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on or about May 11, 2015.

The Respondent's Brief indicated that the Respondent had requested an adjournment in the hearing date until after his release from incarceration, so that the Respondent could appear before the Committee. The Respondent received no adjournment. The Brief alleged that the Committee's Determination was incorrect in stating that the Respondent billed Medicaid fraudulently, in concluding that revocation was the appropriate penalty in the case and in using demeaning and biased language, such as accusing the Respondent of "outright thievery".

The Petitioner replied that, even if the Committee referred erroneously to Medicaid, it was a minor error and the Respondent still billed fraudulently. The Petitioner argued further that the Respondent's Brief failed to make a proper showing that bias affected the case. The Petitioner contended that the Respondent's continued practice would place patients at risk and that revocation constitutes the proper penalty for insurance fraud.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS

2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We vote 5-0 to remand this case to the Committee so the Respondent can have the opportunity to appear before the Committee. The ARB finds it troubling that the Respondent received no adjournment and that the Determination contained a factual error.

The Respondent was incarcerated at the time of hearing and requested an adjournment for a few months time, until his release, so the Respondent could appear before the Committee. The Petitioner argued that the Respondent's continued practice constituted a danger to patients, but the Respondent's License is under summary suspension and there were no charges in this case that the Respondent committed harm to any patients.

The Committee's Determination stated incorrectly that the Respondent committed fraud against the Medicaid Program. Although the Respondent entered a guilty plea to Health Care Fraud, the Court ordered the Respondent to pay restitution to private insurance companies, the New York State Insurance Fund and the United States Department of Labor [Hearing Exhibit 4]. There was no restitution to the Medicaid Program.

The Committee should conduct additional proceedings so the Respondent may appear and so the Committee can consider again the record from the Respondent's conviction.

The penalty the Committee imposed will remain in effect during the remand period. If the Committee has any questions about this remand, the Committee should direct those questions to the ARB in writing, in a letter from the Committee's Administrative Officer to the Administrative Officer for the ARB, with copies to the parties. Following the remand hearing, the Committee should render a Supplemental Determination and serve the Determination on the parties. The ARB will offer the parties the chance to comment upon or challenge the Committee's Supplemental Determination, prior to the time that the ARB considers the Supplemental Determination.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB remands the case to the Committee for further consideration.
2. The Committee shall conduct a further hearing and render a Supplemental Determination.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Eric Senat, M.D.

Linda Prescott Wilson, an ARB Member, concurs in the Determination and Order in the
Matter of Dr. Senat:

Dated: 22 July, 2015


A handwritten signature is redacted with a black box. A checkmark is visible to the left of the box.

Linda Prescott Wilson

In the Matter of Eric Senat, M.D.

Peter S. Koenig, Sr., an ARB Member, concurs in the Determination and Order in the Matter of Dr. Senat.

Dated: July 1, 2015


Peter S. Koenig, Sr.

In the Matter of Eric Senat, M.D.

Steven Grabiec, M.D., an ARB Member, concurs in the Determination and Order in the
Matter of Dr. Senat.

Dated: 7/1/, 2015

A black rectangular redaction box covers the signature of Steven Grabiec, M.D. A small circular mark is visible to the left of the box.

Steven Grabiec, M.D.

In the Matter of Eric Senat, M.D.

Richard D. Milone, an ARB Member, concurs in the Determination and Order in the

Matter of Dr. Senat.

Dated: June 30, 2015



Richard D. Milone, M.D.

In the Matter of Eric Senat, M.D.

John A. D'Anna, M.D., an ARB Member, concurs in the Determination and Order of Dr.

Senat.

Dated: 7-1, 2015



John A. D'Anna, M.D.